

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.17010 of 2018

Hariharan

.. Petitioner

v.

1 The Commissioner
Greater Chennai Corporation, Chennai

2 The Zonal Executive Engineer (XIV)
No.6/64 PUzhuthivakkam Main Road
Chennai- 600 091

3 The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1 Gandhi Irwin Road, Egmore
Chennai - 600 008

4 The Additional Secretary
Housing and Urban Development Department
Secretariat, Chennai - 600 009

5 The Commissioner
Punitha Thomaiyarmalai Panchayat Union at
Chitlapakkam Chennai - 600 064

6 P.Nambiselvam

7 Tahsildar
Sholinganallur Kancheepuram District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the 1st and 2nd respondents to take enforcement action based on the letter dated 27.4.2018 issued by the 3rd respondent for the illegal construction made by the 6th respondent and pass necessary orders.

For Petitioners : Mr.S.Sivaraman

For Respondents : Mr.R.Arunmozhi - for R1 & R2
Mr.Karthik Rajan - for R3
Mr.S.Kamalesh Kannan
Govt. advocate - for R4 & R5

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The above Writ Petition has been filed by the petitioner to issue a Writ of Mandamus, directing the respondents 1 and 2 to take enforcement action based on the letter dated 27.4.2018 issued by the 3rd respondent for the illegal construction made by the 6th respondent.

2. It is the case of the petitioner that the 6th respondent has constructed a house by encroaching the Government Poromboke and also trespassing into his property. In respect of the alleged trespass made by the 6th respondent, the petitioner filed a suit in O.S.No.642 of 2012 on the file of the District Munsif Court, Alandur for permanent injunction. The 6th respondent also filed a suit in O.S.No.780 of 2012 before the District Munsif Court, Alandur in respect of the very same land.

3. The learned counsel appearing for the petitioner submitted that the 6th respondent had encroached the water body and therefore, he should be evicted from the said land.

4. However, a perusal of the affidavit filed in support of the Writ Petition as well as the averments stated in the plaint in O.S.No.642 of 2012, it is very clear that the petitioner has not stated that the land in dispute is a water body. Even in the plaint, he has only stated that the encroached land is a Government Poromboke. Though the petitioner has alleged that the land is a Government Poromboke Land, he has not made the Government as a defendant in the suit. He has filed the suit only as against the 6th respondent.

5. It is also brought to the notice of this court that the petitioner did not get any interim order in O.S.No.642 of 2012. Since the petitioner has not obtained any interim order in the suit, he has filed the present Writ petition. The petitioner cannot prosecute the civil Suit as well as the present Writ Petition simultaneously. On this ground alone, the Writ Petition is liable to be rejected. Accordingly, the Writ Petition is dismissed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

- 1 The Commissioner
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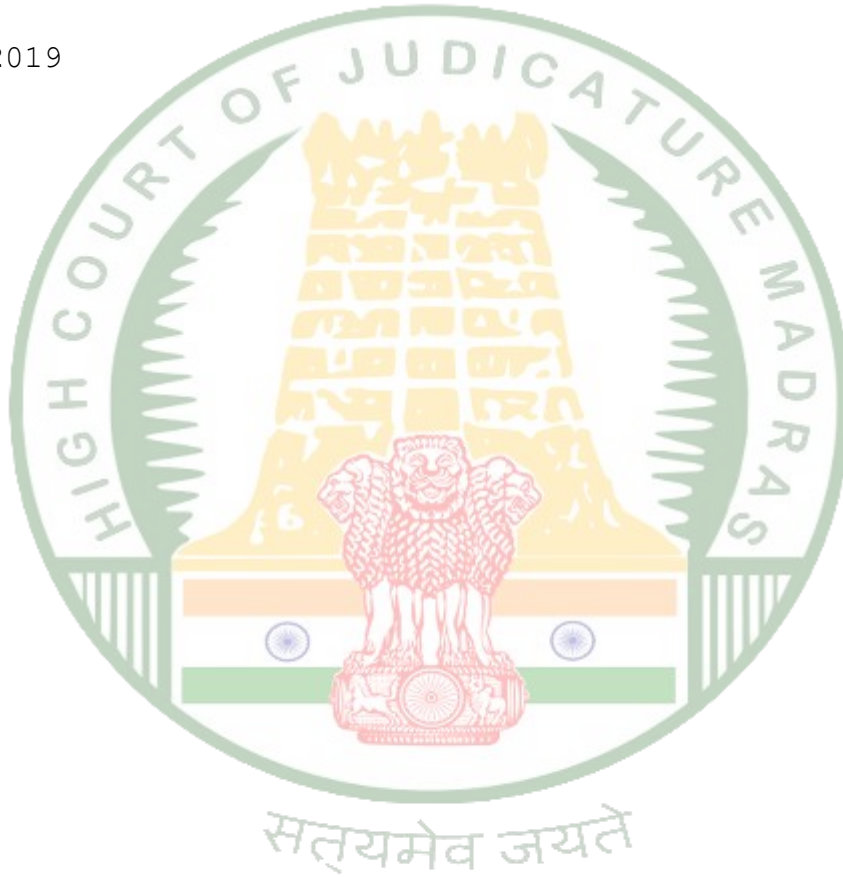
+1cc to Mr.Karthik Rajan, Advocate sr.no.88663

+1cc to Mr.Rajendharan, Advocate sr.no.88274

+1cc to Government Pleader in sr.no.88915

W.P. No.17010 of 2018

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nr 09/01/2019



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